

APPEAL NO. 030220
FILED MARCH 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 6, 2002. The hearing officer determined that the respondent's (claimant) _____, compensable lumbar sprain/strain injury extends to and includes lumbar stenosis, lipomatosis, and radiculopathy; and that the claimant's impairment rating (IR) is 15% as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The appellant (carrier) appealed on sufficiency of the evidence grounds, and also asserts that a chiropractor should not have been selected as the designated doctor in this case and that the designated doctor improperly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides, third edition).

DECISION

Affirmed.

The extent of an injury is a factual determination for the hearing officer to resolve. Conflicting evidence was presented as to the exact nature and extent of the claimant's underlying compensable lumbar injury. The hearing officer reviewed the evidence and determined that the claimant's lumbar injury included the complained-of conditions. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Section 408.125(e) provides that when there is a dispute as to the IR, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer determined that the designated doctor's IR was not against the great weight of the other medical evidence and as such afforded it presumptive weight. On appeal, the carrier asserts that the designated doctor improperly applied the AMA Guides, third edition. In support of its position, the carrier points out that the designated doctor references Table 75 in his report and the fact that there is no Table 75 in the third edition. In response to a letter of clarification from the Commission, the designated doctor specifically recognized and affirmed that usage of the AMA Guides, third edition was proper in this case, and reaffirmed his 15% IR under that edition. It is true that the designated doctor's report indicates that he awarded a 10% impairment for "Specific Disorders of the Spine Table 75IIE." After reviewing the designated doctor's report in its entirety, we conclude that the reference to Table 75(II)(E) was merely a clerical error, and that the intent was to refer to Table 49(II)(E) of

the AMA Guides, third edition, which also awards 10% for surgically treated disc lesion, with residual symptoms.

Finally, the carrier contends that it was error to appoint a chiropractor to act as designated doctor in this case due to the level of care the claimant requires. The carrier asserts that it disputed the designated doctor's appointment on this basis, but that the Commission never acted on the dispute. We note that the carrier failed to present evidence to show when and how it initially disputed the appointment of the designated doctor. Additionally, the carrier has failed to specifically articulate why the Commission's designated doctor selection was improper. We find no specific grounds to invalidate the Commission's selection of the designated doctor in this case.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge